This of course is a fiction. These courts really hold that the plaintiff cannot recover whether he assumed the risk or not. It is submitted that the better rule is to allow the plaintiff to recover, so as to induce the defendant to use greater care in the management of its servants and in the carrying out the purposes of the trust. A recent tendency of some courts has been to give relief at the expense of charitable institutions. *Hordern v. Salvation Army* (1910) 199 N. Y. 233 (defective runway); *McInerny v. St. Luke's Hospital Association of Duluth* (1913) 122 Minn. 10 (dangerous machinery); *St. Paul's Sanitorium v. Williamson* (1914) 164 S. W. (Tex.) 36 (hiring unskilful nurse); *Tucker v. Mobile Infirmary Association* (1915) 191 Ala. 572.

F. L. McC.

CHOSES IN ACTION—NATURE OF PARTIAL ASSIGNEE'S INTEREST—EFFECT ON ASSIGNOR'S INTEREST OF JUDGMENT IN FAVOR OF PARTIAL ASSIGNEE.—CARVILL V. MIRROR FILMS, INC. (1917) 163 N. Y. S. 268.—An employee discharged in breach of his contract assigned his claim for damages accruing up to a certain date, reserving to himself all damages accruing after that period. The partial assignee sued alone, and recovered against the employer. The assignor now sues the latter who sets up as a defense the partial assignee's previous recovery. *Held,* that the assignor is entitled to recover.

It may not be inappropriate to notice that the word interest is used here to designate the aggregate of one's rights, privileges, powers and immunities. See Professor Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning (1913) 23 YALE LAW JOURNAL, 16. The interest of the partial assignee was not protected at common law, but only in equity, as the device of the power of attorney was not applicable to the partial alienation of a chose in action. See Ames, *Cases on Trusts,* (2d ed.) pp. 63, 64. In many code states, however, a court of law will now enforce the partial assignee's claim against the debtor. The result is that the partial assignee's interest is no longer exclusively equitable, but concurrently legal and equitable. See Professor Cook, Alienability of Choses in Action (1917) 30 HARV. L. REV. 449, 455; *Dickinson v. Tysen* (1913) 209 N. Y. 395, 397; *School District v. Edwards* (1879) 46 Wis. 150; *Guagler v. Chicago, Maud P. S. Ry. Co.* (1912) 197 Fed. 79. Most jurisdictions require that the assignor be joined as a party to the suit against the debtor. This rule is merely one of procedure to be complied with in order to protect the defendant against a multiplicity of suits. *O'Dougherty v. Remington Paper Co.* (1880) 81 N. Y. 496; *United States v. Throckmorton* (1878) 98 U. S. 61; *Hughes v. Dundee Co.* (1886) 26 Fed. 831. It may be waived by consent of the parties. *The Fourth National Bank v. Noonan* (1884) 14 Mo. App. 243; aff'd. (1885) 88 Mo. 372; *Flanders v. Canada, etc., Co.* (1908) 161 Fed. 378; aff'd. (1908) 165 Fed. 321. The partial assignee will thus be allowed to sue alone. *Risley v. Phenix Bank* (1881) 83 N. Y. 318; *Caledonia Ins. Co. v. Northern Pacific Ry. Co.* (1904) 32 Mont. 46. Non-joinder of the assignor being demurrable, it seems perfectly justifiable to interpret the defendant's silence on the point as a waiver of his privilege and power to object to

the splitting of the cause of action. See the principal case. Judgment in favor of the partial assignee is then no bar to a later action brought by the assignor. In states where the partial assignee's only standing is in equity, the assignor has, in the part which he did not assign, an interest concurrently legal and equitable; he has, in addition, in the part which he did assign, an interest exclusively legal which conflicts with his assignee's paramount equitable interest. In states where the partial assignee's interest is concurrently legal and equitable, the assignor's interest is also concurrently legal and equitable, but strictly limited to the part of the chose in action which he did not assign. In the part which he did assign, he has no interest, either at law or in equity. See Professor Cook, Alienability of Choses in Action (1917) 30 HARV. L. REV. 449, 455-460.

R. P.

CONFLICT OF LAWS—DUE PROCESS—SERVICE ON ABSENT DEFENDANT BY PUBLICATION.—MCDONALD V. MABEE (1917) 37 SUP. CT. REP. 343.—The defendant, domiciled in Texas, but having gone to Missouri with the intention of permanently residing there, was served by publication and a personal judgment rendered against him on a promissory note. In error to the U. S. Supreme Court, he contended this was a denial of due process. *Held,* that there was such a denial.

The decisions as to the validity of personal judgments against absent domiciled citizens by publication of service have hitherto been in irreconcilable conflict. *Henderson v. Staniford* (1870) 105 Mass. 504; *Raher v. Raher* (1911) 150 Ia. 511. The latter case held that no personal judgment could be rendered against a citizen and resident of a state temporarily absent therefrom, even though personally served, the service being required to be within the limits of the state. The majority opinion relied on *Pennoyer v. Neff* (1877) 95 U. S. 714, but anything in the *Pennoyer v. Neff* case favorable to this view is dictum. *Henderson v. Staniford, supra,* decided that the contractual obligation made in California was well discharged by a California judgment, though rendered after service by publication on the defendant, who was a domiciled citizen of California temporarily absent. The Massachusetts court was thus consistent with the weight of authority, which holds that the law governing the primary obligation of a contract governs in like manner the secondary obligation: that is, the Massachusetts court was merely incorporating the *lex loci contractus* (here California) and deciding that it would adopt and incorporate such law throughout all the obligations which might arise as a result of the contract. See Professor Hohfeld in (1909) 9 COL. L. REV.; comment in (1917) 26 YALE LAW JOURNAL, 771. The important case of *De la Montanya v. De la Montanya* (1896) 112 Cal. 101, held that a decree of alimony, operating as a judgment in personam against a domiciled citizen of California, temporarily without the state, there being notice by publication, was void because of lack of due process. A parallel situation to that in the principal case, in which the defendant never intended to return to Texas, was presented in the recent New York case of *Grubel v. Nassauer* (1913) 210 N. Y. 149, in which the court refused